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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE NM

FEB 17 2000

FRANK M. MUNIZ,

Applicant,

ROBERT M. MARCH
CLERK

v.

No. CV-99-1344 LH/LFG

GERALD ORTIZ, ET AL.

Respondents.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

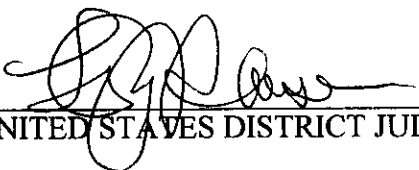
This matter is before the Court to consider Applicant's response to the order of February 8, 2000, in which the Court required Applicant to show cause why his application for writ of habeas corpus should not be dismissed for failure to exhaust available state court remedies. Applicant is a pretrial detainee; he is not attacking a conviction or sentence. He claims he was denied assistance of counsel and was prevented from testifying before the grand jury because he was not allowed to use a telephone. Applicant states that he has not submitted his claims to the state courts because he is asserting violations of the United States Constitution. For the reasons below, the application will be dismissed.

First, pretrial detainees are not excused from the exhaustion requirement. *Justices of Boston Mun. Court v. Lydon*, 466 U.S. 294, 301 (1984); *Dolack v. Allenbrand*, 548 F.2d 891, 894 (10th Cir. 1977) (dictum). And second, even assuming for purposes of this opinion that, as Applicant asserts, the application raises exclusively federal issues, such questions must be submitted first to the state courts. *Steele v. Young*, 11 F.3d 1518, 1523 n.10 (10th Cir. 1993); *Coleman v. Thompson*, 501 U.S. 722, 731 (1991) ("States should have the first opportunity to address and correct alleged violations

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of state prisoner's federal rights."'). The Court will not presume that the state courts of New Mexico are unavailable or incompetent to adjudicate Applicant's claims. *Steele*, 11 F.3d at 1523. The application will be dismissed.

IT IS THEREFORE ORDERED that Applicant's application for writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED without prejudice for failure to exhaust state court remedies, and this proceeding is DISMISSED.


UNITED STATES DISTRICT JUDGE